



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 8

THORPE, NORTH & WESTERN, L.L.P.
P. O. Box 1219
Sandy, UT 84091-1219

COPY MAILED
SEP 16 2002

In re Application of
Craig et al.
Application No. 10/081,742
Filed: February 22, 2002
Attorney Docket No. T9407.NP

OFFICE OF PETITIONS

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed June 4, 2002, under 37 C.F.R. §1.47(a).

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on February 22, 2002, without an executed oath or declaration. Accordingly, on March 19, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of May 19, 2002.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, and a partially executed declaration.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition does not satisfy requirement (1).

As to item (1), Rule 47 applicant has failed to show that the non-signing inventor refused to sign the declaration after having been presented with the application papers (specification, including claims, drawings, and oath or declaration). See MPEP 409.03(d). The petition states the declaration was faxed twice and statements were made by Rick Craig indicating he did not wish to participate in the application.

However, rule 47 applicant has failed to provide any indication that application papers were ever sent to inventor Craig. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor.

Thus on renewed petition, rule 47 applicant must establish the entire application package (including specification, claims and drawings) was presented to the non-signing inventor and he refused to sign.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 S. Clark Place
 Arlington, VA 22202

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

E. Shireen Mello /f/
Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy